

REMARKS/ARGUMENTS

The Examiner has rejected claims 1-11 and 13 under 35 U.S.C. § 102(e) as being anticipated by U.S. Pat. No. 6,483,583 to Wright et al. In addition, the Examiner has objected to claims 12 and 14 as being dependent upon a rejected base claim. In response, Applicant has amended independent claims 1 and 7 to add the limitation that the sloping surface be fixed. In addition, Applicant has rewritten dependent claims 12 and 14 in independent form, including all the limitations of the base claim as originally filed. Further, Applicant has added new claims 15 and 16, which are the same as original claims 12 and 14. Applicant believes that these amendments to the claims overcome the Examiner's rejections. In addition, Applicant requests that the Examiner enter the following remarks.

Anticipation "requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee." *Hoover Group, Inc. v. Custom Metalcraft, Inc.*, 66 F.3d 299, 302, 36 U.S.P.Q.2d 1101, 1103 (Fed. Cir. 1995). "[P]rior knowledge by others requires that all of the elements and limitations of the claimed subject matter must be expressly or inherently described in a single prior art reference." *Elan Pharms., Inc. v. Mayo Foundation for Medical Educ. & Research*, 304 F.2d 1221, 1227, 64 U.S.P.Q.2d 1292 (Fed. Cir. 2002) (citing *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q.2d 1949, 1950 (Fed. Cir. 1999); *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1571, 7 U.S.P.Q.2d 1057, 1064 (Fed. Cir. 1988)). "The single reference must describe and enable the claimed invention, ***including all claim limitations***, with sufficient clarity and

detail to establish that the subject matter already existed in the prior art and that its existence was recognized by persons of ordinary skill in the field of the invention." *Id.* (citing *Crown Operations Int'l, Ltd. v. Solutia Inc.*, 289 F.3d 1367, 1375, 62 U.S.P.Q.2d 1917, 1921 (Fed. Cir. 2002); *In re Spada*, 911 F.2d 705, 708, 15 U.S.P.Q.2d 1655, 1657 (Fed. Cir. 1990)); see also *PPG Indus., Inc. v. Guardian Indus. Corp.*, 75 F.3d 1558, 1566, 37 U.S.P.Q.2d 1618, 1624 (Fed. Cir. 1996) (emphasis added).

Claim 1 requires, in part, that the grain fall from the overhead compartment and through the discharge port "in a curtain of grain of measured thickness". As the curtain of grain falls, it moves across a sloping presentation surface. As shown in Fig. 1, as gravity pulls the curtain of grain downward, it brushes past the sloping presentation surface 20. The sloping presentation surface 20 is a fixed surface that does not move. Rather, it is the grain that moves past the sloping presentation surface.

Similarly, claim 7 requires, in part, a downwardly extending grain channel located below the discharge port that is adapted to receive the curtain of grain as it falls from the overhead compartment. The curtain of grain moves through the channel and past the sloping presentation surface. As shown in Fig. 1, the sloping presentation surface is a fixed surface to which the NIR apparatus 30 is attached.

Wright et al. discloses an apparatus in which grain falls through chute 16 and past door 18, as shown in Fig. 2. Grain eventually spills onto conveyor 78, as shown in Fig. 6, where it is brought toward the optical equipment 84. As shown in Fig. 9, the heap of grain moves up conveyor 78 and is partially restricted by wall 82. Beyond wall 82, the

grain is analyzed by the optical equipment 84, as described by the Examiner.

Yet the conveyor belt 78 taught by Wright et al. is far different than the presentation surface 20 disclosed by Applicant and required by claims 1 and 7. As described in the disclosure of Wright et al., conveyor belt 78 carries the grain from the bottom of the chute up towards the optical equipment. (col. 8, line 49 through col. 9, line 3). A conveyor belt, by its plain meaning, is a moving surface.

By contrast, the presentation surface 20 disclosed by Applicant is a fixed surface that does not move. Rather, it is the grain that falls past the presentation surface. As such, Applicant has amended independent claims 1 and 7 to add the limitation that the sloping presentation surface be fixed. Because Wright et al. does not teach the requirement that the presentation surface be fixed, this limitation alone distinguishes the Applicant's claims from the Wright et al. reference. Accordingly, Applicant believes that claims 1 and 7, and those claims that depend therefrom, are patentably distinct and that the Examiner's rejection should be withdrawn.

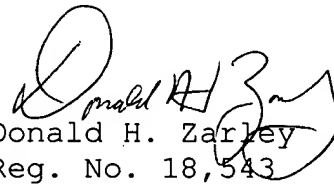
The Examiner has stated that original claims 12 and 14 would be allowable if rewritten in independent form. Applicant has amended claims 12 and 14 to include all the limitations of claim 7 as originally filed. Applicant requests favorable action with respect to these claims. Further, because Applicant believes that claim 7 is allowable as amended, Applicant has added new claims 15 and 16 to capture the limitations of original claims 12 and 14. Applicant believes that these amendments overcome the Examiner's rejections and requests favorable action.

CONCLUSION

In view of the above amendments and remarks, Applicant believes claims 1-16 are in condition for allowance and respectfully requests allowance of such claims. If any issues remain that may be expeditiously addressed in a telephone interview, the Examiner is encouraged to telephone the undersigned at 515/558-0200.

Any fees or extensions of time believed to be due in connection with this amendment are enclosed herein; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 50-2098.

Respectfully submitted,



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